

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-7229

United States Court of Appeals
FOR THE SECOND CIRCUIT

NO. 76-7229

VINCENT J. TRANTOLO,
Plaintiff-Appellant,

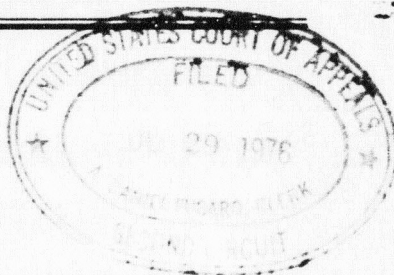
v.

JOSEPH T. GORMLEY, JR. ET AL.
Defendant-Appellees

PLAINTIFF-APPELLANT'S APPENDIX TO BRIEF

WALDEMAR J. LACH
Attorney for Plaintiff-Appellant

750 Main Street
Hartford, Conn. 06103



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Portions of Plaintiff's Complaint:

17. On July 31, 1974, more than four months after the incident had occurred, some four months after all the statements had been taken, some two months after all evidence, including the polygraph, had been gathered by the State but two (2) weeks after the plaintiff wrote the Governor, the plaintiff, a victim of the larceny, was arrested by virtue of a warrant from the Court of Common Pleas charging the plaintiff with violation of § 53a-61 of the Connecticut General Statutes "assault in the third degree" and the same was done notwithstanding the fact that the defendants and some or all of them knew or had reason to know that the statements under oath of the three young men used to obtain such warrant were false. The plaintiff was forced to submit to arrest, undergo the taking of his fingerprints and the processing of his photograph and suffered all the indignities and humiliation that accompanies such procedures. Although plaintiff charged a conspiracy of the three, only Michael Sullivan was arrested, and his case has been concluded in such a manner that the plaintiff is unable to determine what happened. The plaintiff was not called or made privy to any matters concerning the disposition of said case although he is the complainant, and as a matter of fact, the defendants still refuse and neglect to inform the plaintiff of how and in what manner the case was disposed of, if at all, and whether their activities against Michael Sullivan resulted in any exculpatory information for the plaintiff, Vincent J. Trantolo.

18. During the pendency of the criminal charges against the plaintiff, the defendant, McGuigan, asked the plaintiff's attorney in the criminal case, Waldemar J. Lach, Esq., to file a motion in behalf of the plaintiff under section 499a of the Connecticut Practice Book, as amended. The defendant, McGuigan, unequivocally stated he would have no objection to the motion. Thereafter, pursuant to the defendant's, McGuigan's, suggestion, such a motion was filed on

behalf of the plaintiff. Then the defendant, Rothenberg, who had previously indicated that the young men involved would be arrested and who had also indicated that he was no longer involved in the case, appeared in Judge Menchun's chambers to warn the Judge against granting the motion, contrary to his, Rothenberg's, representations and contrary to the representations made by the defendant, McGuigan.

20. At about 4 o'clock just prior to the hearing on the Motion to Dismiss and contrary to the implied representations made by the defendant, McGuigan, in reprisal to plaintiff's pressing his Motion for Bill of Particulars (dated December 3, 1974), he, McGuigan, filed additional charges against the plaintiff, charging the plaintiff with violation of § 53a-64 of the Connecticut General Statutes, "Reckless Endangerment."

21. At the hearing on February 28, 1976, although the State knew that the complainants, Sullivan and Babich, were to testify, the prosecutors did not inform the Court that the witnesses were offering untruthful statements to obtain a conviction in a criminal case and contrary to their oaths as attorneys.

22. § 53a-21 of the Connecticut General Statutes entitled, "Use of physical force in defense of property; larceny; criminal mischief" provides:

"A person is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes it necessary to prevent an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes it necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 53a-19."

The defendants knew and know that the plaintiff was making an attempt to recover his personal property and that a defense to any assault charge will be based upon the aforesaid section and proof concerning Sullivan's, et al theft of the money is of great importance to the trial of the case and for the plaintiff in his defense. Again, notwithstanding the defendants' knowledge of the untruthful statements of the complaining witnesses in this regard, the defendants have and will continue to maintain that such witnesses are honest, open and candid.

24. The plaintiff believes and therefore avers that the continued prosecution of this case by the defendants on behalf of the State is for the purpose of persecution not prosecution, for the purpose of harassment not for justice and fair play, for the purpose of ridiculing, embarrassing and requiring the plaintiff to apologize and is a reprisal against the plaintiff for writing a letter to the Governor, all done in violation of his Constitutional rights, as aforesaid. Further, the motive for the prosecution of the criminal case against the defendant is for the purpose of harassment and not for the purpose of the fair and due enforcement of the criminal laws of the State of Connecticut.

COURT RULING ON MOTION FOR TEMPORARY RESTRAINING ORDER

The motion for a preliminary injunction is denied and the case is dismissed. *Younger V. Harris* 401 U.S. 37, 46 (1971)

March 22, 1976

M. JOSEPH BLUMENFELD
USDJ.

JUDGMENT

The above-entitled action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United

States District Court Judge, on the Plaintiff's Motion for Injunctive Relief;

And the Court after a hearing on the Plaintiff's Motion rendered its Decision, denying the Motion and dismissing the Plaintiff's Complaint;

It is accordingly ORDERED and ADJUDGED that the Plaintiff's Complaint be and is hereby dismissed.

Dated at Hartford, Connecticut, this 30th day of March, 1976.

Connecticut Statutes:

§ 53a-21. Use of physical force in defense of property; larceny; criminal mischief

"A person is justified in using reasonable physical force upon another person when and to the extent that he reasonably believes it necessary to prevent an attempt by such other person to commit larceny or criminal mischief involving property, or when and to the extent he reasonably believes it necessary to regain property which he reasonably believes to have been acquired by larceny within a reasonable time prior to the use of such force; but he may use deadly physical force under such circumstances only in defense of person as prescribed in section 53a-19."

§ 53a-61. Assault in the third degree: Class A misdemeanor

"(a) A person is guilty of assault in the third degree when:

(1) With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or

(2) he recklessly causes serious physical injury to another person; or

(3) with criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

(b) Assault in the third degree is a class A misdemeanor."

§ 53a-64. Reckless endangerment in the second degree:
Class B misdemeanor

"(a) A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a risk of physical injury to another person.

(b) Reckless endangerment in the second degree is a class B misdemeanor."

Connecticut Practice Book:

Sec. 499A. Dismissal of Information by Court

"All courts having jurisdiction of criminal cases shall at all times have jurisdiction and control over informations and criminal cases pending therein and may, at any time, upon motion by the defendant, dismiss any information and order such defendant discharged if, in the opinion of the court, there is not sufficient evidence or cause to justify the bringing or continuing of such information or the placing of the person accused therein on trial. No defendant who has been bound over after a hearing on probable cause or who has waived such a hearing may make a motion under this section until the state has completed the presentation of its evidence at the trial."